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# CURRENT LEGISLATION.

DOUGLAS MCC. BLACK, *Editor-in-Charge.*

MILITARY AND WAR EMERGENCY LEGISLATION OF THE STATES, 1917.—Though returns from the legislatures are incomplete as yet, there is enough to indicate certain general tendencies likely to be expressed in the laws passed to meet the demands of the present war. Elaborate acts for the reorganization of the militia in conformity with the requirements of the Hay Army Bill<sup>1</sup> of the Federal Congress have been passed in several states.<sup>2</sup> The establishment of a Home Guard,<sup>3</sup> special constabulary,<sup>4</sup> or emergency police,<sup>5</sup> is a popular way of preparing against internal troubles; while statutes empowering the governor to render the United States any assistance within the power of the State, and to that end to organize and employ, as his judgment shall dictate, its resources in men and materials,<sup>6</sup> illustrate the need for centralization felt in times of crisis. Special aid to the Federal government in the form of grants for military purposes,<sup>7</sup> appropriations for additional pay to soldiers, sailors and marines in the service of the United States,<sup>8</sup> and the taking of a census, in two states, of men and resources available for use in war,<sup>9</sup> are also worthy of notice. Military training in schools is authorized and encouraged in several jurisdictions.<sup>10</sup>

But, apart from purely military legislation, and the many laws calculated to encourage enlistments by granting special favors, tax exemptions, etc., to honorably discharged soldiers and their depend-

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<sup>1</sup>U. S. Stat. at Large 1915-1916, c. 134.

<sup>2</sup>Pub. Acts Conn. 1917, c. 11; Pub. Laws Me. 1917, c. 259; Sess. Laws Minn. 1917, c. 400; N. J. Laws 1917, c. 81; Gen. Laws Ore. 1917, c. 327; So. Dak. Laws 1917 (unofficial), S. B. 150; Pub. Acts Vt. 1917, No. 168; Sess. Laws Wash. 1917, c. 107; Laws Wyo. 1917, c. 107. There are also numerous laws amending the military codes and militia acts of the various states, particularly with relation to the naval militia. For an interesting discussion of Legal and Historical Aspects of the Militia, see 26 Yale Law Journ. 471.

<sup>3</sup>Pub. Acts Conn. 1917, c. 32; Pub. Laws Me. 1917, c. 278; Gen. Acts Mass. 1917, c. 148.

<sup>4</sup>Pub. Acts Conn. 1917, c. 74; Pub. Laws Me. 1917, c. 284.

<sup>5</sup>Laws N. Y. 1917, c. 64 (emergency police in Greater New York.)

<sup>6</sup>Pub. Acts Conn. 1917, c. 44; N. J. Laws 1917, c. 126. A similar act, passed in New Hampshire, was approved Mar. 27, 1917.

<sup>7</sup>Pub. Laws Me. 1917, c. 275; Laws N. Y. 1917, c. 13; Pa. Laws 1917, No. 13; Sess. Laws Wash. 1917, c. 3, 4. The Washington act (c. 3) goes the length of imposing an indebtedness of not more than \$2,000,000 on Pierce County, with which the latter is to purchase 70,000 acres to present to the United States as a military reservation.

<sup>8</sup>Pub. Laws Me. 1917, c. 277; Gen. Acts Mass. 1917, c. 211. There is also a New Hampshire act.

<sup>9</sup>Pub. Acts Conn. 1917, c. 136, 145; Laws N. Y. 1917, c. 103.

<sup>10</sup>Laws N. Y. 1917, c. 49; Gen. Laws Ore. 1917, c. 383. Laws providing for school exercises inculcating patriotism, and instruction in the duties of citizenship in peace and war, are of a like tenor. Nev. Laws 1917, c. 146; Sess. Laws Minn. 1917, c. 108.

ents,<sup>11</sup> or by making provisions for absent voting,<sup>12</sup> stays without prejudice in suits in courts,<sup>13</sup> and other privileges<sup>14</sup> to offset the sacrifices involved in leaving civil life, there are war emergency statutes of the greatest interest among the state laws of 1917. The war has awakened a tardy enthusiasm for checks on the sale of liquor in some states.<sup>15</sup> It has persuaded Massachusetts to suspend strict observance of the Lord's Day, it being no longer unlawful to engage in "the cultivation of land, and the raising, harvesting, conserving and transporting of agricultural products" on the Sabbath.<sup>16</sup> Vermont has defined as crimes a series of acts ranging from making or having in one's possession maps, drawings or descriptions of forts, arsenals, telegraph or telephone lines, wireless stations, etc., to poisoning the water supply or conspiring to blow up public buildings, the severest penalties to be visited on the guilty.<sup>17</sup> Minnesota, in a law difficult to reconcile with American ideals of freedom of speech and of the press, but of a sort only too common in war-crazed countries, makes it unlawful to "advocate or teach" that men should not enlist in the military or naval forces, or that the "State should not aid or assist the United States in prosecuting or carrying on war with the public enemies of the United States."<sup>18</sup>

On one branch of war emergency legislation the friends of social reform will look with alarm. It has been developed in response to an appeal by the Council of National Defense that the several legislatures "delegate to the governors of their respective States the power to suspend or modify restrictions contained in their labor laws when such suspension or modification shall be requested by the Council of National Defense . . . for a specified period and not longer than the duration of the war."<sup>19</sup> Vermont has responded by enacting that "the commissioner of industries may, with the approval of the governor, suspend the operation of the laws of this State relating to the hours of employment of women and children while the United States is at

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<sup>14</sup>See, *e. g.*, Pub. Acts Conn. 1917, c. 28 (funeral expenses); Pub. Laws Me. 1917, c. 202 (veterans not to be treated as paupers, but supported in homes); Gen. Acts Mass. 1917, c. 179 (aid for dependent relatives of soldiers); Sess. Laws Minn. 1917, c. 279 (veterans to have free tuition at State University); Laws So. Dak. 1917 (unofficial), H. B. 264 (rewards to National Guard members for services on Mexican border).

<sup>15</sup>Sess. Laws Minn. (Extra Sess. 1916), c. 2.

<sup>16</sup>Pub. Laws Me. 1917, c. 273. A sort of "moratorium" with regard to foreclosures of mortgages and levies on execution is declared in Oregon in favor of men enlisted in the "volunteer forces" or the National Guard—a law obviously not passed in contemplation of the advent of universal military training. Gen. Laws Ore. 1917, c. 275.

<sup>17</sup>See, *e. g.*, Mass. Acts and Resolves 1917, c. 43 of Resolves (State employees to be paid difference between salary received on border service and what they would have received if they had stayed home); Pub. Acts Conn. 1917, c. 181 (veterans not required to pay vendors' licenses).

<sup>18</sup>Pub. Acts Vt. 1917, No. 225 (no liquor licenses of second class to be issued while United States is at war); Laws N. Y. 1917, c. 172 (forbidding sale of liquor near Plattsburgh Training Camp).

<sup>19</sup>Gen. Acts Mass. 1917, c. 207.

<sup>19</sup>Pub. Acts Vt. 1917, No. 236.

<sup>19</sup>Sess. Laws Minn. 1917, c. 463.

<sup>19</sup>See Monthly Review U. S. Bar. Labor Statistics, vol. LV, p. 655 (May, 1917).

war."<sup>20</sup> A statute permitting suspension of any provision of the labor law which "will obstruct, hamper or interfere with the successful prosecution of the present war, or be opposed to public welfare and necessity," has passed the legislature and is awaiting gubernatorial action in New York;<sup>21</sup> while Pennsylvania has a similar bill pending at present writing.<sup>22</sup> It is almost unnecessary to point to the grave danger lurking in such statutes, vesting, as they do, unprecedented and unbridled power in the hands of legislative commissions,<sup>23</sup> and imperilling at one blow the whole structure of social welfare legislation, erected to protect alike present and coming generation of Americans. There is English precedent<sup>24</sup> for these dangerous measures; but our emergency is not yet grave enough to justify dispensing with safeguards so essential to the normal happiness of our people and the future welfare of the race.

**FEDERAL EMERGENCY WAR LEGISLATION.**—The entrance of the United States into the world war has inevitably given rise to a situation which the legislation of peace times is totally inadequate to meet and which, therefore, demands the enactment of special, temporary measures capable of coping with the emergency. Aside from the general provision of the Federal Penal Code defining treason<sup>1</sup> and seditious conspiracy,<sup>2</sup> there were few laws existing at the outbreak of the present war which were aimed at offenses against the national defense. By federal statutes, spying in the army or navy has long been punishable by death.<sup>3</sup> Furthermore, it is a crime, punishable by fine or imprisonment or both to injure military or naval works<sup>4</sup> or to commit arson on magazines, ships or ammunition belonging to the United States<sup>5</sup> or to make a sketch of any fort or naval vessel without authority.<sup>6</sup> In the

<sup>20</sup>Pub. Acts Vt. 1917, No. 172.

<sup>21</sup>Legislature of New York, Session of 1917, Senate, Pr. No. 2149.

<sup>22</sup>Legislature of Pennsylvania, Session of 1917, File of House of Representatives, No. 1637.

<sup>23</sup>The power vested in the commission to suspend labor laws "opposed to public welfare and necessity" and to make "rules and regulations prescribing conditions under which employment will be permitted" in certain industries, seems a delegation of legislative functions to that body without setting a sufficiently definite standard for their exercise. That there must be a standard, and that the New York courts have refused to go further than to permit a legislative commission to decide what are "reasonable" regulations, see *Village of Saratoga Springs v. Saratoga Gas, etc. Co.* (1908) 191 N. Y. 123, 83 N. E. 693; *People v. Klinck Packing Co.* (1915) 214 N. Y. 121, 139, 108 N. E. 278, 284.

<sup>24</sup>See, *e. g.*, *Defence of the Realm Consolidated Regulations 1914*, as amended to Nov. 29, 1916, Regulation 6 A. For a recent review of British war emergency legislation, see 30 *Harvard Law Rev.* 663.

<sup>1</sup>(1909) 35 Stat. 1088; 10 U. S. Comp. Stat. (1916) §§ 10,165-10,167.

<sup>2</sup>(1909) 35 Stat. 1089; 10 U. S. Comp. Stat. (1916) § 10,170.

<sup>3</sup>(1806) 2 Stat. 371; 1 U. S. Comp. Stat. (1913) § 2,448; (1862) 12 Stat. 340; 4 U. S. Comp. Stat. (1916) § 2,966.

<sup>4</sup>(1909) 35 Stat. 1097; 10 U. S. Comp. Stat. (1916) § 10,208.

<sup>5</sup>(1909) 35 Stat. 1144; 10 U. S. Comp. Stat. (1916) § 10,459.

<sup>6</sup>(1909) 36 Stat. 1084; 10 U. S. Comp. Stat. §§ 10,209-10,210. An additional penalty is prescribed for attempting to communicate such matter to a foreign government. (1911) 36 Stat. 1085; 10 U. S. Comp. Stat. (1916) §§ 10,211-10,212.